

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ROBERT C. LEVIS,

Plaintiff,

v.

JOSEPH NISH, et al.,

Defendants.

:
:
:
:
:
:
:
:
:
:

CIVIL NO. 3:CV-05-2272

(Judge Caputo)

ORDER

Plaintiff, Robert C. Levis, an inmate at the State Correctional Institution in Waymart, Pennsylvania, commenced this *pro se* action with a civil rights complaint (Doc. 1) filed pursuant to the provisions of 42 U.S.C. § 1983. Although the complaint is somewhat vague, Plaintiff appears to claim that Defendants have imposed cruel and unusual punishment upon him in violation of his Constitutional rights.

Presently before the Court is the Defendants' motion to dismiss Plaintiff's complaint or, in the alternative, for a more definite statement (Doc. 11). A brief in support of the motion was filed contemporaneously. Although Plaintiff's brief in opposition to the motion is now overdue, he has neither made an appropriate filing nor requested an extension of time in which to do so.

A dispositive motion generally may not be granted merely because it is unopposed. Since Local Rules of Court must be "construed and applied in a manner consistent with the Federal Rules of Civil Procedure," *Anchorage Assoc. v. Virgin Islands Board of Tax Review*, 922 F.2d 168, 174 (3d Cir. 1990), the disposition of an unopposed motion ordinarily requires a merits analysis. The Court of Appeals for the Third Circuit has stated,

however, that Local Rule 7.6 can be applied to grant a motion to dismiss without analysis of the complaint's sufficiency "if a party fails to comply with the rule after a specific direction to comply from the court." *Stackhouse v. Mazurkiewicz*, 951 F.2d 29, 30 (3d Cir. 1991).

Local Rule 7.6 provides that if a party fails to file an opposing brief within fifteen (15) days after service of the movant's brief, the motion will be deemed unopposed. M. D. Pa. L. R. 7.6. Based on his failure to take any action in response to the Defendants' motion, it would appear that Plaintiff may have abandoned interest in pursuing this matter. However, the court will grant additional time for the Plaintiff to respond to the motion and direct him to file a brief in opposition within twenty (20) days. If Plaintiff fails to oppose the motion or otherwise communicate with the court within twenty (20) days of the date of this Order, the Court will consider the motion to dismiss unopposed and grant dismissal without a merits analysis. Moreover, upon failure of Plaintiff to oppose the Defendants' motion, the Court may consider dismissing this case for failure to prosecute and failure to comply with a court order under FED.R.Civ.P. 41(b).

**ACCORDINGLY, THIS 18th DAY OF JANUARY, 2006, IT IS HEREBY ORDERED
THAT:**

Plaintiff shall file a brief in opposition to Defendants' motion to dismiss within twenty (20) days of the date of this Order. If Plaintiff fails to timely oppose the motion or otherwise communicate with the Court, the Court will grant the unopposed motion to dismiss without a merits analysis, and the Court will also consider dismissing the case for failure to prosecute and failure to comply with a court order under FED.R.Civ.P. 41(b).

/s/ A. Richard Caputo
A. RICHARD CAPUTO
United States District Judge